Supreme Court, U.S.
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No. 08-807

In the Supreme Court of the United States

BRAD LIEBERMAN, PETITIONER,

v.

ILLINOIS, RESPONDENT.

On Petition for a Writ of Certiorari to the Appellate Court of Illinois

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether this Court should review the state appellate court's judgment affirming a jury verdict that petitioner suffers from a mental disorder predisposing him to engage in, and making it substantially probable that he will engage in, future acts of sexual violence, where ample record evidence supports the jury's verdict and the state appellate court properly applied federal due process standards in sustaining that verdict.

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BRIEF IN OPPOSITION

The certiorari petition should be denied. Petitioner alleges no split in authority. And aside from generalized attacks on the practice of civilly committing sex offenders, petitioner's challenge is to the sufficiency of the evidence supporting his commitment. He claims that all of the evidence at trial demonstrated his "full volitional control," and that he was committed notwithstanding this evidence because the Illinois courts refused to apply federal due process principles. Pet. i, 1, 2, 12. Both of these contentions are false. In fact: (1) jurors heard ample evidence that petitioner lacks volitional control, and (2) the appellate court applied precisely the federal due process standard that petitioner claims was ignored. In short, the petition not only seeks mere error correction on its own terms, but also mischaracterizes the record and the appellate court's decision in an effort to manufacture the error it seeks to correct. Further review by this Court is unwarranted.

STATEMENT

A. *The Illinois Legal Framework.* Under Illinois's Sexually Violent Persons Commitment Act (SVPCA), a "sexually violent person" is one "who has been convicted of a sexually violent offense * * * and who is dangerous because he * * * suffers from a mental disorder that makes it substantially probable that [he] will engage in acts of sexual violence." 725 Ill. Comp. Stat. § 207/5(f). In turn, proving a "mental disorder" requires a showing of "a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence." 725 Ill. Comp. Stat. § 207/5(b).

Once an individual is committed, Illinois law authorizes that commitment to persist only "until such time as [he] is no longer a sexually violent person." 725 Ill. Comp. Stat. 207/40(a). The individual is entitled to a periodic reexamination of his mental condition—six months after the initial commitment

and at least once every twelve months thereafter—to determine whether he has made sufficient progress to qualify for conditional release or discharge. 725 Ill. Comp. Stat. 207/55(a). Moreover, the Act requires the Department of Human Services (DHS) to notify the committed person of his right to petition the court for discharge, and provides that even if no discharge petition is filed, the court must set a probable cause hearing to determine whether facts exist warranting a further hearing on whether the person is still sexually violent. 725 Ill. Comp. Stat. 207/65(b)(1). Indeed, a committed person may petition the court for discharge "at any time" under § 70, as well as with the Secretary's authorization under § 65. 725 Ill. Comp. Stat. 207/70; 725 Ill. Comp. Stat. 207/65.

B. *Petitioner's Rape Convictions And Incarceration.* In 1980, petitioner was convicted in Cook County, Illinois, of six counts of rape and one count of attempted rape. Pet. App. 2a. In that same year, petitioner was convicted of one count of rape and one count of attempted rape in Lake County, Illinois. *Ibid.* Petitioner was sentenced to concurrent terms of imprisonment, the longest of which was forty years. *Ibid.*

Petitioner engaged in sexual and other misconduct while in prison. Not only was he discovered in the visitor's bathroom engaged in sexual activity with a woman, Pet. App. 5a, but he was also found to have written unsolicited letters to several women. Tr. Vol. IV at 102-104. In one case, he enclosed his photograph in a letter to a woman he had seen on television, *id.* at 102-03, in another he wrote to a woman whose picture he had seen in a newspaper—telling her "how beautiful she was," "how sweet and how hot," and "how lucky he would be to have a friend like her," *id.* at 103—and in yet another instance he sent a profanity-laden letter to a woman who failed to attend a prison picnic. *Id.* at 104. The women objected to receiving his letters. *Ibid.* Meanwhile, prison officials found petitioner in possession of cannabis, he tested positive for morphine,

and he was "disciplined five times for drugs or drug paraphernalia." Pet. App. 4a-5a.

C. *Petitioner's Commitment Proceedings.* In January 2000, the State filed a petition seeking petitioner's commitment under the SVPCA, alleging that petitioner had been convicted of a number of sexually violent offenses and was dangerous to others because his mental disorders created a substantial probability that he would engage in future acts of sexual violence. Pet. App. 2a-3a.

At trial, the State presented the testimony of two expert witnesses: Dr. Jacqueline Buck and Dr. Barry Leavitt. Dr. Buck, a clinical psychologist and special evaluator for the Illinois Department of Corrections (IDOC), diagnosed petitioner "with paraphilia not otherwise specified, sexually attracted to nonconsenting persons (paraphilia NOS)," cannabis abuse, and antisocial and narcissistic personality disorders. Pet. App. 6a-7a. Using four actuarial tools, Dr. Buck assessed petitioner's risk of committing future acts of sexual violence. Petitioner scored "very high" on the Minnesota Sex Offender Screening Tool Revised (MnSOSTR-R); "extremely high" on the Static-99; "high" on the Violence Risk Appraisal Guide (V-RAG); and "extremely high" on the Sex Offender Risk Appraisal Guide (SORAG). Pet. App. 7a. Based on both her clinical judgment and the actuarial test results, Dr. Buck concluded that petitioner was at a high risk of sexually reoffending. Pet. App. 8a.

In forming her opinion, Dr. Buck also considered petitioner's criminal history, including the facts of his rape convictions, as well as other cases in which petitioner was arrested and charged with a sexually violent offense. Pet. App. 3a-4a. Moreover, it was relevant that petitioner refused to discuss his crimes with Dr. Buck, characterized himself as a victim of "overzealous police officers" and "mistaken identity," and attributed his multiple rape convictions to "just being in the wrong place at the wrong time." Pet. App. 4a. In addition, Dr. Buck took account of evidence of

petitioner's behavior while in prison, including his drug use, the incident in which he engaged in sexual conduct with a woman in a visitor's bathroom, and his unsolicited letters to women. Pet. App. 4a-5a. Dr. Buck also considered that, while in DHS custody pending trial on the commitment petition, petitioner exhibited "angry, hostile, aggressive behaviors." Pet. App. 5a.

Dr. Buck was unable to find any mitigating factors, as petitioner refused to participate in any of the sex offender treatment offered by DHS. Pet. App. 7a-8a. And because petitioner "scored as a psychopath," he did not exhibit the usual pattern of decreased crime corresponding with increased age. Pet. App. 8a.

As the appellate court summarized her testimony, Dr. Buck thus concluded that petitioner "suffers from mental disorders that are both congenital and acquired, affect his emotional and volitional capacity, and predispose him to commit future acts of sexual violence." *Ibid.* Accordingly, it is substantially probable that petitioner will continue to commit acts of sexual violence if released into the community. *Ibid.*

Counsel for petitioner then cross-examined Dr. Buck for several days, and the petition relies on an excerpt from the third day of this examination. See Pet. 4-5. Dr. Buck testified on that day that professionals in her field do not measure volitional control as "high, low, up, [or] down," explaining that she was unaware of any way to measure volitional capacity. Pet. App. 11a. And she distinguished between petitioner's mental disorders, which "impact his emotions and thinking to the extent that he is predisposed to commit acts of sexual violence," and the question of "[w]hether he chooses to do those things or not," the latter being "where the volitional control comes in." Tr. Vol. VII at 103. Dr. Buck reserved a diagnosis of complete lack of volition for persons who are off of their medication for serious mental illnesses such as schizophrenia and manic depression. Pet. App. 12a. But she was clear that petitioner's mental

disorders do "impact his emotional and volitional control," "warp his perceptions and his feelings," "allow him to exhibit sexually assaulting behavior," and "color his viewpoint of the world * * * so that it makes it easy for him to choose to rape somebody." Tr. Vol. VII at 103, 117.

Dr. Leavitt, the State's second expert, testified that petitioner suffers from: (1) paraphilia NOS; (2) antisocial personality disorder; (3) narcissistic personality disorder; and (4) cannabis abuse within a controlled environment. Pet. App. 12a. Petitioner's paraphilia, a congenital or acquired disorder, is the primary predisposing condition compelling him to commit sexually violent acts; the other disorders compound the problem by making it easier for him to engage in sexually violent behavior. *Ibid.* Dr. Leavitt explained that petitioner's sexual behavior is not merely driven by impulse, but is "highly planned," "consistent [with] someone who is compelled to engage in this type of sexually deviant behavior." Tr. Vol. IX at 62. Dr. Leavitt found a substantial probability that petitioner will commit future acts of sexual violence unless he participates in appropriate treatment. Pet. App. 13a. And while Dr. Leavitt acknowledged that petitioner has controlled his impulses at times—*e.g.*, he did "not rape[] anyone else that we're aware of" while incarcerated—Dr. Leavitt made clear that petitioner is not always able to do so. Tr. Vol. IX at 179.

Like Dr. Buck, Dr. Leavitt also explained how he arrived at his diagnoses, relating that petitioner qualified for a diagnosis of paraphilia NOS because, among other things, he was identified by sixteen women as having committed, or attempted to commit, sexually violent offenses against them, over half of which cases resulted in convictions. Pet. App. 13a. Dr. Leavitt also used actuarial instruments to conduct a risk assessment and measure petitioner's likelihood of reoffending. *Ibid.* Petitioner scored in the "high risk" category on the Static-99 and the MnSOSTR-R, both of which actually underestimate a subject's future risk of reoffending. *Ibid.* The actuarial testing thus

confirmed Dr. Leavitt's clinical judgment that petitioner was substantially likely to commit future acts of sexual violence if released into the community. Pet. App. 13a-14a.

D. *The Jury Verdict And Appellate Review.* In February 2006, the jury rendered a verdict finding petitioner to be a sexually violent person. Pet. App. 55a-56a. Following a hearing, the court committed petitioner to DHS custody for institutional care in a secure facility until further order of the court. Pet. App. 53a-54a.

On September 28, 2007, the Illinois Appellate Court affirmed the trial court's judgment rejecting, among other claims, petitioner's contention that the State's evidence did not meet the constitutional and SVPCA requirements for civil commitment. Pet. App. 1a-44a. The court first explained that the SVPCA passes federal constitutional muster for, although it does not require the jury to make an explicit finding that the individual has serious difficulty controlling his sexual behavior, the statute makes such a finding essential to any verdict that the individual is a sexually violent person.[1] Pet. App. 24a (citing *In re Detention of Varner*, 800 N.E.2d 794 (Ill. 2003)). The SVPCA contains a volitional component in (1) its definition of "mental disorder" as "a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in sexual violence," and again in (2) its required finding that it is "substantially probable" that the individual will

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[1] Petitioner's jury was instructed that "[a] sexually violent person means a person who has been convicted of a sexually violent offense and who is dangerous because he suffers from a mental disorder that makes it substantially probable that the person will engage in acts of sexual violence," Tr. Vol. XVI at 166, and that "[m]ental disorder means a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence," *id.* at 170.

engage in future acts of sexual violence. Pet. App. 24a. Accordingly, the jury must find that the individual lacks volitional control over his sexually violent behavior to conclude that he is a sexually violent person. *Ibid.*

After a thorough review of the trial record, the appellate court further concluded that there was sufficient evidence to support the jury's finding that petitioner has serious difficulty controlling his sexually violent behavior. Pet. App. 25a. Indeed, the court held that Dr. Leavitt's testimony alone was sufficient to support this conclusion, for he diagnosed petitioner with paraphilia NOS, cannabis abuse, and antisocial and narcissistic personality disorders. *Ibid.* And Dr. Leavitt testified that "petitioner's paraphilia affects his emotional and volitional capacity and predisposes him to commit future acts of sexual violence, and explained that [petitioner's] other disorders act as disinhibiting influences that make it easier for [petitioner] to commit sexually violent acts." Pet. App. 24a-25a. Petitioner refused treatment for his paraphilia, and he has no empathy for his victims or remorse for his actions. Pet. App. 25a. Dr. Leavitt also employed actuarial instruments, which confirmed his clinical judgment that petitioner's mental disorders create a substantial probability that he will engage in future acts of sexual violence. *Ibid.* Thus, the jury could reasonably conclude from Dr. Leavitt's testimony alone that petitioner has serious difficulty controlling his sexually violent behavior. *Ibid.*

The court went on to conclude that Dr. Buck's testimony also supported the jury's finding. *Ibid.* She diagnosed petitioner with the same mental disorders diagnosed by Dr. Leavitt, and she testified that those disorders affect petitioner's emotional and volitional capacity and predispose him to commit future acts of sexual violence. *Ibid.* Petitioner refused to undergo treatment for his disorders; he lacks empathy for his victims; and he has refused to accept responsibility for his criminal offenses, blaming them on overzealous prosecutors and mistaken identity. *Ibid.* Dr. Buck

concluded that petitioner's mental disorders make it substantially probable that he will commit future acts of sexual violence. *Ibid.*

And the court specifically rejected petitioner's effort "to interpret [Dr. Buck's] testimony to mean that he is able to control his sexually violent behavior and that, in effect, he could make a volitional choice to never again commit a sexually violent offense." Pet. App. 26a. The court determined that "such a conclusion does not follow from Dr. Buck's testimony," for "[t]he mere fact that [petitioner] intentionally committed his sexual offenses does not mean that he has the volitional capacity to choose not to commit them," and "Dr. Buck never offered such an opinion and in fact testified that there is a substantial probability that [petitioner] will commit a future act of sexual violence." *Ibid.* In this regard, the court recalled Dr. Buck's testimony that petitioner's "mental disorders impact his emotional and volitional capacity and predispose him to commit acts of sexual violence," and that there is a "substantial probability that [petitioner] will commit a future act of sexual violence." *Ibid.* "Dr. Buck's statements regarding [petitioner's] volitional control, when considered in context of her entire testimony, [did] not undermine the jury's verdict that petitioner is a sexually violent person." Pet. App. 26a-27a. The mere fact that petitioner intentionally committed his sexual offenses does not mean that he has the volitional capacity to choose not to commit them. Pet. App. 26a.

The Illinois Appellate Court denied rehearing on March 20, 2008, Pet. App. 47a, and the Illinois Supreme Court denied leave to appeal on September 24, 2008. Pet. App. 46a.

REASONS FOR DENYING THE PETITION

Petitioner begins with a sweeping challenge to civil commitment statutes generally, comparing them to "[v]igilante justice" and suggesting that States increasingly rely on civil commitment to "keep sex

offenders confined indefinitely." Pet. 9. But this is not a challenge to petitioner's own commitment, and this Court explained in *Kansas v. Hendricks*, 521 U.S. 346 (1997), that, "far from any punitive objective, the commitment's duration is * * * linked to the stated purposes of the commitment, namely, to hold the person until his mental abnormality no longer causes him to be a threat to others." 521 U.S. at 363. The Illinois statute hews carefully to these purposes. The law provides for regular reassessments and permits a civil commitment to continue only "until such time as the person is no longer a sexually violent person." 725 Ill. Comp. Stat. 207/40(a); see *supra* p. 2.

Nor is it true, as petitioner seems to imply (but never actually says) that Illinois and other States indiscriminately over-commit sex offenders. In Illinois, the IDOC screens sexually violent offenders for their eligibility for commitment under the SVPCA, and only a fraction of those offenders proceed to the second stage of the screening process—an interview with a clinician. Tr. Vol. IV at 46-47. And of those interviewed, only a fraction are recommended for commitment, and an even smaller number are ultimately committed. *Ibid.*, see Pet. 9. And in any event, petitioner nowhere explains how any of this bears on *his* case.

Ultimately, what petitioner seeks is further review of the sufficiency of the evidence marshaled at his commitment trial. Specifically, he claims that Illinois courts ignored due process principles and allowed his commitment without *any* evidence that he lacks volitional control. But this claim fails on both fronts, for the appellate court evaluated petitioner's commitment using the very due process principles that petitioner accuses the court of ignoring, and jurors heard ample evidence that petitioner lacks volitional control.

A. Petitioner is wrong to claim that the Illinois appellate court "refused to acknowledge the constitutional issue" in his case and "casually ignore[d] controlling federal precedent," and he errs in

concluding that the "court's silence about the constitutional limits on civil commitment of sex offenders is tantamount to a proclamation that the limits set by *Hendricks* and [*Kansas v. Crane*, 534 U.S. 407 (2002),] need not be observed in Illinois." Pet. 2, 7. On the contrary, the appellate court thoroughly applied the due process standards set forth in *Hendricks* and *Crane*; the court simply did so with citation to later Illinois decisions expressly following those cases, rather than with citation to *Hendricks* and *Crane* themselves.

Far from "casually ignor[ing] federal precedent," Pet. 7, the appellate court's analysis of petitioner's challenge to the sufficiency of the evidence turned entirely on the federal due process rule—that the State "establish that [petitioner] has serious difficulty controlling his sexually violent behavior." Pet. App. 23a-24a; see *Crane*, 534 U.S. at 413 (holding that due process requires "proof of serious difficulty in controlling behavior" to civilly commit sex offender). The court thus quoted at length from *In re Detention of Traynoff*, 831 N.E.2d 709 (Ill. App. Ct. 2005), for its elaboration of what *Crane* requires. Pet. App. 23a (quoting *Traynoff*'s discussion of the "Constitution's safeguards," part of *Traynoff*'s analysis of *Crane*); see also Pet. App. 26a. And the appellate court expressly followed the Illinois Supreme Court's decision in *In re Detention of Varner*, 800 N.E.2d 794 (Ill. 2003), which relied on *Crane* and *Hendricks*. Pet. App. 24a; see *Varner*, 800 N.E.2d at 797-799. Other cases cited in the appellate court's opinion likewise evidence Illinois's strict adherence to the federal due process standards. See *In re Detention of Tittlebach*, 754 N.E.2d 484 (Ill. App. Ct. 2001) (cited at Pet. App. 22a-23a); *In re Commitment of Stevens*, 803 N.E.2d 1036 (Ill. App. Ct. 2004) (cited at Pet. App. 24a).

Indeed, the appellate court reached precisely the conclusion that federal due process demands to sustain a civil commitment—that the offender has "serious difficulty in controlling behavior." *Crane*, 534 U.S. at 413; see Pet. App. 23a ("we find that there was

sufficient evidence presented to establish that [petitioner] has serious difficulty controlling his sexually violent behavior"); Pet. App. 24a ("we * * * find that there was sufficient evidence presented at trial to support a finding that [petitioner] lacks volitional control over his mental disorders"); see also Pet. App. 28a ("Both [state] witnesses concluded that [petitioner's] mental disorders create a substantial probability that he will engage in future acts of sexual violence"). In short, the appellate court's opinion—and the authorities cited therein—belie petitioner's cavalier representation that after this case "the limits set by *Hendricks* and *Crane* need not be observed in Illinois." Pet. 2.

B. The appellate court thus determined that the expert testimony at petitioner's trial satisfied the due process standard, and petitioner's claim boils down to a disagreement with the appellate court over the best reading of the trial evidence. The appellate court held that the evidence was sufficient to sustain a finding that petitioner has "serious difficulty in controlling his sexually violent behavior," Pet. App. 23a—the agreed due process standard—while petitioner insists that "*there is no proof at all* of a serious difficulty with behavioral control," Pet. 11-12 (emphasis in original). This is not a challenge to the constitutional rule that the appellate court employed, for it was precisely the rule that *Crane* announced and that petitioner himself recites in his petition. It is a request for error correction based on the purported misapplication of that rule to the trial record in this case.

But even if the Court were otherwise inclined to undertake error correction, there was no error here. As the appellate court held, the State adduced ample evidence that petitioner has serious difficulty controlling his sexually violent behavior. Petitioner seizes upon and selectively emphasizes a few lines from Dr. Buck's lengthy trial testimony, claiming it as proof that jurors heard *no* evidence that he has serious difficulty controlling his sexually violent behavior. Pet. 4-5, 11; Pet. App. 22a. But the state appellate court

considered and properly rejected petitioner's sufficiency challenge, holding, among other things, that Dr. Leavitt's testimony was *alone* enough to sustain the jury's finding beyond a reasonable doubt. Pet. App. 24a. And indeed it was. Dr. Leavitt testified that petitioner's mental disorders affect his mental control, so that at times he is unable to check his impulses; he is "predispos[ed] * * * to commit future acts of sexual violence"; and there is a substantial probability that he will commit future acts of sexual violence if released. Pet. App. 24a-25a; Tr. Vol. IX at 175.

The appellate court also correctly held that Dr. Buck's testimony further demonstrated petitioner's serious difficulty in controlling his sexually violent behavior. Pet. App. 25a. Dr. Buck testified that petitioner suffers from several mental disorders and that those disorders affect his emotional and volitional capacity, predispose him to commit future acts of sexual violence, and make it substantially probable that he will commit future acts of sexual violence. *Ibid.* Petitioner relied in the appellate court on the part of Dr. Buck's testimony that he emphasizes here—that petitioner acted intentionally when he engaged in sexual abuse—but the appellate court properly rejected that argument, based on its review of Dr. Buck's days-long testimony as a whole:

> [Petitioner] seems to interpret this testimony to mean that he is able to control his sexually violent behavior and that, in effect, he could make a volitional choice to never again commit a sexually violent offense. However, such a conclusion does not follow from Dr. Buck's testimony. The mere fact that [petitioner] intentionally committed his sexual offenses does not mean that he has the volitional capacity to choose not to commit them. Dr. Buck never offered such an opinion and in fact testified that there is a substantial probability that [petitioner] will commit a future act of

> sexual violence. In this regard, Dr. Buck explained that [petitioner's] mental disorders "warp his perceptions and his feelings and allow him to exhibit sexually assaulting behavior.'" * * * [I]n Dr. Buck's expert opinion, [petitioner's] mental disorders impact his emotional and volitional capacity and predispose him to commit acts of sexual violence.

Pet. App. 26a-27a; see *Crane*, 534 U.S. at 412 (recognizing that "most severely ill people—even those commonly termed 'psychopaths'—retain some ability to control their behavior"). The appellate court thus correctly concluded that "Dr. Buck's statements regarding [petitioner's] volitional control, when considered in context of her entire testimony," are consistent with "the jury's verdict that [petitioner] is a sexually violent person." Pet. App. 26a-27a.

Petitioner seeks error correction by painting this as a case in which "*there is no proof at all* of a serious difficulty with behavioral control," Pet. 11-12 (emphasis in original), but the appellate court addressed this claim and properly concluded that the trial record as a whole included ample evidence to support the jury verdict.

C. Finally, petitioner suggests that certiorari review is warranted because some States have "[p]oorly [d]rafted" civil commitment laws, and that many such laws have survived constitutional challenge. Pet. 10-11. But here again petitioner alleges no split in authority—indeed, he suggests that the cases have all gone one way—and he does not imply, much less argue, that Illinois's law is unconstitutional. Nor could he. In all material respects, the Illinois statute is identical to the Kansas law upheld in *Hendricks* and *Crane*. Compare 725 Ill. Comp. Stat. 207/5(f), with *Hendricks*, 521 U.S. at 352. Thus, both the Illinois Supreme Court and the Seventh Circuit have upheld the Illinois statute, *Varner*, 800 N.E.2d at 794 (applying *Hendricks* and *Crane* to hold that statute "contains definitions

that supply the constitutionally required elements for civil commitment"); *Varner v. Monohan*, 460 F.3d 861, 864 (7th Cir. 2006) ("[o]nce a jury has found mental illness and a likelihood of future offenses, it has drawn the line the Court thought essential" in *Crane*), *cert. denied*, 549 U.S. 1288 (2007), and federal courts have rejected challenges to similar laws elsewhere, see *Laxton v. Bartow*, 421 F.3d 565, 571-572 (7th Cir. 2005) (Wisconsin); *Rose v. Mayberg*, 454 F.3d 958, 962 (9th Cir. 2006) (California); *Brock v. Seling*, 390 F.3d 1088, 1090 (9th Cir. 2004) (Washington); *Linehan v. Milczark*, 315 F.3d 920, 927 (8th Cir. 2003) (Minnesota).

Indeed, petitioner ultimately concedes that it is "likely * * * that a commitment order under a narrowly tailored state statute will satisfy the constitutional requirements," but objects that "focusing on the state statute by itself is not sufficient to ensure constitutional protections in every case." Pet. 11. Here, however, the Illinois Appellate Court did exactly what petitioner recommends—it "consider[ed] the constitutional issues independently" to "determin[e] whether the evidence in the record comports with the due process protections recognized in *Hendricks* and *Crane*." *Ibid.* After an exhaustive review of the trial evidence, the court applied *Crane*'s due process standard nearly verbatim to this evidence and properly held that it satisfied the constitutional standard. Compare *Crane*, 534 U.S. at 413 (offender must have "serious difficulty in controlling behavior"), with Pet. App. 23a-24a ("we find that there was sufficient evidence presented to establish that [petitioner] has serious difficulty controlling his sexually violent behavior").

In short, petitioner alleges no split in authority, levels no challenge to the Illinois commitment law, and received the individualized evaluation of the record evidence that he espouses. Petitioner seeks error correction based on the state appellate court's purported misreading of the trial record. But that is not grounds for certiorari review, and in any event the

state court correctly concluded—based on a thorough review of the record—that the evidence supported the jury's finding that petitioner has serious difficulty controlling his sexually violent conduct.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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